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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,026	03/19/2004	Jerry Rolia	200300267-1	7936

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EXAMINER

OKORONKWO, CHINWENDU C

ART UNIT	PAPER NUMBER
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2136

MAIL DATE	DELIVERY MODE
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09/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/805,026

Applicant(s)

ROLIA ET AL.

Examiner

Chinwendu C. Okoronkwo

Art Unit

2136

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some.* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. For the record, the Examiner acknowledges that no priority claim has been made in regards to this application.

Information Disclosure Statement

2. For the record, the Examiner acknowledges that no IDS has yet to have been received with this application filed on 03/19/2004.

Oath/Declaration

4. For the record, the Examiner acknowledges that the Oath/Declaration submitted on 03/19/2004 has been received and considered.

Drawings

5. For the record, the Examiner acknowledges that the Drawings submitted on 03/19/2004 have been received and considered.

Specification

6. For the record, the Examiner acknowledges that the Specification submitted on 03/19/2004 has been received and considered.

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7. Pursuant to USC 131, claims 1-36 are presented for examination.

8. Claims 1-36 are pending.

Double Patenting

9. Claims 1-36 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of copending Application No. **10/698,769**. Although the conflicting claims are not identical, they are not patentably distinct from each other because several of the claimed elements found in the instant application are found in the instant application are analogous to elements in the copending application.

10. Claims 1-27 of copending Application No. **10/698,769** contain every element of claims 1-36 of the instant application and thus anticipate the claims of the instant application. Claims 1-27 of the instant application therefore are not patently distinct from the copending application claims and as such are unpatentable for obvious-type double patenting. A later patent/application claim is not patentably distinct from an earlier claim if the later claim is anticipated by the earlier claim.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1-36 are rejected under 35 U.S.C. 102(b) as being unpatentable over Rottoo (US Patent No. 5,933,417).

Regarding claims 1 and 20, Rottoo, discloses a method and apparatus for governing access to resources in a computing utility facility, comprising: receiving a demand profile associated with an application that specifies a pattern of resources from a pool of resources to be delivered with a class of service (col. 4 lines 45-50); determining if the pool of resources has resources to be delivered to the application at the specified class of service (col. 4 lines 50-67); reducing the specified class of service to a lower class of service acceptable to the application if the determination indicates the resource pool is unable to deliver the resources at the specified class of service (col. 14 lines 50-60); and admitting an application to the computing utility facility if resources delivered at the reduced class of service are available from the pool of resources and acceptable to the application (col. 4 lines 50-67).

Regarding claims 2 and 21, Rottoo, discloses a method and apparatus further comprising, assigning the resource from the pool of resources to the application

in response to admitting the application to the computing utility facility (col. 4 lines 50-67).

Regarding claims 3 and 22, Rottoo, discloses the method and apparatus wherein the class of service is selected from multiple classes of service including: a static class of service, a guaranteed time varying class of service, a predictable best effort class of service and best effort class of service (col. 5 lines 15-22).

Regarding claims 4 and 23, Rottoo, discloses the method and apparatus wherein determining if resources from the pool of resources delivered at the specified class of service further comprises having the resources available for delivery at a class of service at least as high as the class of service specified by the application (col. 15 lines 15-60).

Regarding claims 5 and 24, Rottoo, discloses the method and apparatus wherein the determination further comprises: considering the demand requirements across multiple classes of service when fulfilling the demand profile and class of service specified by the application (col. 15 lines 22-60).

Regarding claims 6 and 25, Rottoo, discloses the method and apparatus wherein reducing the class of service further includes: requesting that the application accept delivery of resources at a class of service lower than the class of service

specified by the application according to the actual available resources in the pool of resources (col. 15 lines 20-60).

Regarding claims 7 and 26, Rottoo, discloses the method and apparatus wherein the demand profile associated with an application further identifies the resources required from a pool of resources during one or more demand cycles (col. 14 lines 45-60).

Regarding claims 8 and 27, Rottoo, discloses the method and apparatus wherein admitting the application further comprises: unfolding the one or more demand cycles from the demand profile associated with the application into time slots requiring resources from the pool of resources at the requested class of service (col. 5 lines 15-22); comparing the time slots requiring resources at the accepted class of service with a staging calendar of time slots representing the available resources in the pool of resources at the requested class of service (col. 5 lines 20-60); and converting time slots from the staging calendar to a permanent calendar when the comparison indicates the time slots requiring resources from the demand profile are at the class of service requested and available for assignment (col. 14 lines 30-60).

Regarding claims 9 and 28, Rottoo, discloses the method and apparatus wherein unfolding the one or more demand cycles includes a caveat time cycle and

corresponding classes of service based upon events that occur over a long-period of time and are selected from a set including special events, holidays, seasonal occurrences and emergencies (col. 15 lines 15-22).

Regarding claims 10 and 29, Rottoo, discloses the method and apparatus wherein the caveat time cycle is based upon knowing when at least one particular event is going to occur in the future (col. 14 lines 45-60).

Regarding claims 11 and 30, Rottoo, discloses the method and apparatus wherein converting time slots from the staging calendar to a permanent calendar comprises: copying the time slots from the staging calendar to the permanent calendar; and preallocating the requested resources from the pool of resources according to the permanent calendar schedule (col. 14 lines 30-60).

Regarding claims 12 and 31, Rottoo, discloses the method and apparatus wherein converting time slots from the staging calendar to a permanent calendar comprises: indicating the time slots in the staging calendar associated with the requested resources are permanent and not for staging purposes; and pre-allocating the requested resources from the pool of resources according to the permanent calendar schedule (col. 14 lines 40-60).

Regarding claims 13 and 32, Rottoo, discloses the method and apparatus wherein converting time slots from the staging calendar to a permanent calendar comprises: indicating the time slots in the staging calendar associated with the requested resources are permanent and not for staging purposes; and pre-allocating the requested resources from the pool of resources according to the permanent calendar schedule (col. 5 lines 34-45).

Regarding claims 14 and 33, Rottoo, discloses the method and apparatus further comprising: policing requests for resources from the admitted applications to determine if the resources being requested in the accepted class of service are also within an acceptable range of demand (col. 5 lines 20-60).

Regarding claims 15 and 34, Rottoo, discloses the method and apparatus wherein the policing further comprises: intercepting a request for resources from an application admitted to access a pool of resources (col. 4 lines 45-50); determining if resource requested is within the accepted class of service and an acceptable range of demands based upon the demand profile of the application (col. 5 lines 20-60); indicating an application is not entitled to the request when the determination indicates the request is outside the acceptable range of demands and class of service (col. 5 lines 34-45); and indicating an application is entitled to the request when the determination indicates an application is within the acceptable range of demands and class of service (col. 5 lines 34-45).

Regarding claims 16 and 35, Rottoo, discloses the method and apparatus further comprising arbitrating the allocation of limited resources between two or more applications entitled to receive the limited resources (col. 4 lines 45-50).

Regarding claims 17 and 36, Rottoo, discloses the method and apparatus wherein the arbitration further comprises: detecting a conflict in providing requested resources to two or more admitted applications entitled to receive the limited resources (col. 5 lines 9-22); determining if at least one application can forego receiving the requested resources causing the conflict for a predetermined period of time according to a priority scheme (col. 8 lines 25-30); instructing the at least one application to forego receipt of the requested resources for a period of time in accordance with the determination (col. 14 lines 45-60); allocating resources to the remaining admitted applications entitled to receive the requested resources in accordance with the priority scheme (col. 14 lines 50-60).

Conclusion

12. The prior art made of record but not relied upon is considered pertinent to applicant's disclosure comprises:

Mashinsky (US Patent No. 6,034,618) – teaches a system and method for routing telecommunications in a manner that efficiently uses resources.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chinwendu C. Okoronkwo whose telephone number is (571) 272 2662. The examiner can normally be reached on MWF 9:30 - 7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Moazzami can be reached on (571) 272 4195. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CCO

September 4, 2007

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